CF0000060288

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Division Bench (riminal)

IN THE HIGH COURT OF JUDICATURE, M.P. AT JABALPUR

CRIMINAL APPEAL NO. 69 /1997.

APPELLANT (in Jail) : Lalloo @ Teksingh Rathore, S/o Bhurelal Rathore, Aged 21 years, Occupation Agriculturist, R/o village Jogipur, P.S. Gourela, Distt. Bilaspur (M.P.).

-Vs.-

RESPONDENT : State of Madhya Pradesh through Police Station, Gourela, Distt. Bilaspur (M.P.).

382
8-1-97
Filed on.....
by Shri P P Sahu
.....Advocate
31/97
Rto. A.R.

CRIMINAL APPEAL UNDER SECTION 374 OF CODE OF CRIMINAL PROCEDURE

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(27)

आदेश पत्रक

मामला क्रमांक Cr.A. No. 69/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH: BILASPUR

Division Bench: Hon'ble Shri L.C.Bhadoo & Hon'ble Shri Dhirendra Mishra, JJ

Criminal Appeal No. 69 of 1997

Appellant : Lallu @ Teksingh Rathore

Vs.

Respondent : State of Madhya Pradesh

Appellant by Dr. N.K. Shukla, Sr. Advocate with Shri Dilip Dubey, Advocate.
State by Shri U.N.S.Deo, G.A. with Shri M.P.S. Bhatia, Panel Lawyer.

ORAL JUDGMENT
(02 /02/2006)

L.C.Bhadoo, J

By this appeal under Section 374(2) of the Code of Criminal Procedure the appellant has questioned the legality of the judgment of conviction and order of sentence dated 18.11.1996 passed by II Additional Sessions Judge, Bilaspur in S.T.No. 381/95 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of murder of Bhulli @ Chotelal convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and pay a fine of Rs. 500/-, in default thereof to further undergo two months' rigorous imprisonment.

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2. Case of the prosecution, in brief, is that P.W.2 Girdhar Rathore lodged the report (Ex.P/1-A) in the Police Station-Gourella to the effect that he is engaged in business of purchasing milk from the villages and selling the same in Gourella and on the fateful day in the morning at about 7.00 a.m. he was going to village-Jogisaar and when he reached near Primary School of village-Jogisaar he saw that Bhulli Rathore @ Chotelal was coming on foot towards main road from his house. At that time Lallu Rathore of village-Jogisaar came on a bicycle carrying Tabbal in his hand and after alighting from the bicycle assaulted on the neck of Bhulli whereupon Bhulli after taking turn caught the Tabbal by his hands and started saying that "don't assault Babu, don't assault Bahu" but Babu did not stop and after snatching his Tabbal again assaulted on the neck of Bhulli as a result of which Bhulli fell on the ground and Lallu again assaulted with Tabbal from the sharp side on the neck of Bhulli on account of which his neck was slit. Thereafter, Lallu again attacked with the Tabbal. Seeing this he (P.W.2 Girdhar Rathore) went towards the Mill of Ramratan Rathore and disclosed the incident to him. Based on this report Station House Officer registered the case under Section 302 of the IPC, left for the scene of occurrence and prepared the Panchanama of the body (P-5). He took into possession under P-2 bloodstained soil and plain soil, one pair of *chappal* (slipper) and one old umbrella. He also took into possession the weapon of offence – Tabbal and the clothes of the accused under P-6. The site plan (P-7) was prepared. The Tabbal was sent for opinion to the Assistant Surgeon, Primary Health Centre, Gourella under P-9 and doctor gave his opinion (P-9-A). The body of Bhulli was sent for postmortem examination under P-10 to the Primary Health Centre, Gourella where S.E.Singh conducted postmortem on the body of

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Bhulli and prepared the report (P-8). The bloodstained articles were sent for chemical examination to the Forensic Science Laborator, Sagar from where report (P-21) was received and as per the report blood was found on Tabbal and the clothes of the accused. After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Pendra Road who in turn committed the case to the Sessions Judge, Bilaspur from where the learned II Additional Sessions Judge received the case on transfer for trial.

3. Prosecution in order to establish charge against the accused examined 15 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he is innocent and has been falsely implicated in the crime. The accused also examined one defence witness namely Parmeshwar Deen.

4. After hearing the arguments of Additional Public Prosecutor and counsel for the accused learned trial Court convicted and sentenced the accused as mentioned in paragraph-1 of this judgment.

5. We have heard Dr. N.K.Shukla, Sr. Advocate and Shri Dilip Dubey, Advocate appearing for the accused/appellant and Shri U.N.S.Deo with Shri M.P.S.Bhatia, learned counsel for the State.

6. Homicidal death of Bhulli @ Chotelal is not in dispute.

7. As far as involvement of the accused in committing the murder of Bhulli is concerned, learned Sr. Advocate appearing on behalf of the accused/appellant submits that P.W.2 Girdhar has stated that immediately

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after seeing the incident he went to the house of Ramratan (P.W.5) and informed him and his wife about the incident whereas both the witnesses, Ramratan and his wife, have not supported the evidence of P.W.2 Girdhar, therefore, the evidence of P.W. 2 Girdhar does not inspire confidence.

8. On the other hand, learned counsel for the State Shri Deo and Shri Bhatia support the judgment of the trial Court.

9. The crime in question was witnessed by P.W. 2 Girdhar who has stated that at the relevant time he was engaged in purchasing the milk from the villages and supplying the same in Gourella market and on the fateful day in the morning he was going to ~~Gourella~~ Jogisar from his village and at about 7.00 a.m. when he reached near Primary School of ~~Gourella~~ Jogisar he saw the accused assaulting the deceased with Tabbal. P.W. 2 Girdhar is an independent witness. Nothing has been brought on record in the cross-examination of this witness which shows that this witness has deposed against the accused on account of any animosity or otherwise.

10. As far as the evidence of Ramratan (P.W.5) is concerned, he has turned hostile. The evidence of Girdhar (P.W. 2) cannot be disbelieved for the reason that P.W. 3 Jhelabai-wife of Ramratan in the cross-examination has admitted that on the fateful day Girdhar came to their house to collect milk and she has also admitted that Girdhar used to collect milk from their house. In paragraph-5 she has further stated that there was some dispute between accused Lallu and deceased Bhulli regarding the land, therefore the animosity between the accused and the deceased was there and as such there was a motive to commit the crime in question.

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11. Moreover, the evidence of P.W. 2 Girdhar stands corroborated by the medical evidence of P.W. 12 Dr. S.S.Singh who has categorically stated that he conducted the postmortem on the body of Bhulli on 16.06.1995 at about 10.40 a.m. and found the right hand of the deceased amputated, there was another incised wound on the forearm, both the bones were cut, there was a fracture, incised wound on the neck and cervical vertebra was completely cut, all the structures up to the depth of the injuries are cut, neck was attached to the body with posteriorly placed skin and muscle only and there was an incised wound on right porito occipital region. Therefore, in view of this medical evidence ocular evidence of Girdhar stands corroborated as Girdhar has stated the accused attacked the deceased with spade (Tabbal) on his neck and hand. Even the spade and clothes of the accused were recovered from him under P-6 and the same were found to be stained with blood as per the F.S.L. report (P-21).

12. In view of the above evidence, the involvement of the accused in committing the murder of Bhulli @ Chotelal stands established. We do not find any illegality or infirmity in the findings of the trial court.

13. In the result, the appeal being devoid of merits is liable to be dismissed and the same is accordingly dismissed.

14. Learned counsel for the State Shri Deo submitted that the accused absconded while he was undergoing the sentence in the Central Jail, Raipur in the year 1998.

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	15. The Director General of Police to direct the Superintendent of Police, Raipur to make frantic efforts to arrest the accused. The trial court should also pass appropriate orders & take steps for arresting the accused. Sd/- L.C. Bhadoo Judge	Sd/- Dhirendra Mishra Judge